



Economic Regulation Authority

# Licence application guidelines

Electricity, gas and water licences

19 January 2022

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# 1. Introduction

This guideline is for persons (businesses) wanting to apply for:

- a licence to generate, transmit, distribute or sell electricity
- a licence to distribute or sell gas to small use customers<sup>1</sup>
- a licence to provide one or more water services
- an amendment, transfer, renewal, surrender or cancellation of a licence.

As the Western Australian regulator for electricity, gas and water services licences, the Economic Regulation Authority's responsibilities include assessing licence applications from businesses that want to provide, or already provide, the above services.

This guideline seeks to address some of the main questions that you may have as a licence applicant.

## ***Do you need a licence?***

Section 2 sets out who does and does not need a licence.

## ***How do you apply for a licence?***

Section 3 provides an overview of the licence application process, including:

- how you apply for a licence
- what is expected of you during the application process
- how long the application process takes
- what the licence application costs are
- how the ERA makes its decision on an application
- how you can appeal the ERA's decision.

## ***What information must you include in an application?***

Section 4 sets out the information that must be included in an application for a licence.

If you already have a licence and want to apply for a licence amendment, renewal or transfer, please refer to section 5.

If you hold an electricity or gas licence and want to surrender it, or you want to apply to cancel your water licence, please refer to section 6.

## ***What are your obligations as a licensee?***

Section 7 outlines the terms and conditions the ERA may impose on a licensee, a licensee's reporting requirements and the costs associated with holding a licence. It also outlines the ERA's enforcement framework in the event a licensee breaches the conditions of its licence, as well as the circumstances in which the Governor may cancel a licence.

The ERA has developed this guideline in accordance with the applicable legislation. While the ERA has taken care to compile the requirements for licence applications, the summary

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<sup>1</sup> A 'small use customer' is a customer who consumes less than one terajoule of gas per year (Gas Act, section 3).

descriptions of the relevant legislation for the supply of electricity, gas or water do not contain all material terms of those laws. Therefore, this document is not a substitute for legal advice. You should not act based on any matter contained in this document without obtaining appropriate professional advice.

## 2. Activities requiring a licence

The following acts set out the activities that require a licence:<sup>2</sup>

- Part 2 of the [Electricity Industry Act 2004](#) (Electricity Act)
- Part 2A of the [Energy Coordination Act 1994](#) (Gas Act)
- Part 2 of the [Water Services Act 2012](#) (Water Act).

As a licence applicant, you should familiarise yourself with the licensing requirements of the relevant act and its subsidiary legislation.

Sections 2.1 to 2.3 describe the activities that require a licence, and provide examples of activities that do not require a licence, either because they do not fall within the scope of the acts, or because they are exempt.

### 2.1 Electricity

There are five types of electricity licence:

- A generation licence, which authorises the licensee to construct and/or operate one or more generating works.
- A transmission licence, which authorises the licensee to construct and/or operate one or more transmission systems.<sup>3</sup>
- A distribution licence, which authorises the licensee to construct and/or operate one or more distribution systems.<sup>4</sup>
- A retail licence, which authorises the licensee to sell electricity to end use customers for consumption.
- An integrated regional licence, which authorises the construction and/or operation of any combination of generation, transmission, distribution and retail activities for the purpose of supplying electricity to customers outside the area covered by the South West Interconnected System.<sup>5</sup>

#### ***Activities outside of the scope of the Electricity Act***

Under the Electricity Act, you are not required to hold a generation, transmission or distribution licence if the generating works, transmission system or distribution system is used, or to be used, solely for the self-supply of electricity.<sup>6</sup> That is, for consumption by:

- The person who owns, controls or operates the works or system.

<sup>2</sup> You can obtain copies of these acts and associated codes and regulations from the State Law Publisher's website: [www.legislation.wa.gov.au](http://www.legislation.wa.gov.au)

<sup>3</sup> The Electricity Act (section 3) defines a transmission system as any apparatus, equipment, plant or buildings used, or to be used, for, or in connection with, the transportation of electricity at nominal voltages of 66 kV or higher.

<sup>4</sup> The Electricity Act (section 3) defines a distribution system as any apparatus, equipment, plant or buildings used, or to be used, for, or in connection with, the transportation of electricity at nominal voltages of less than 66 kV.

<sup>5</sup> The South West Interconnected System is Western Australia's main electricity network, supplying electricity to the South West of the State between Kalbarri, Albany and Kalgoorlie, including the Perth metropolitan area.

<sup>6</sup> Electricity Act (section 7(5)).

- A related body corporate of a person who owns, controls or operates the works or system (if that person is a body corporate).
- or
- A person who is in partnership with, or is a participant in a joint venture arrangement with, a person who owns, controls or operates the works or system.

If you are an electricity generator, you do not require a retail licence if you sell electricity solely for consumption by another person on the premises where the generating works are located.<sup>7</sup>

You do not require an electricity retail licence if you sell electricity to a person who is not the end use customer. For example, a generator is not required to hold an electricity retail licence if it sells electricity solely to retailers who then sell the electricity to end use customers.

### ***Exempt electricity activities***

The Governor can exempt an individual business or class of business from the requirement to hold an electricity licence.<sup>8</sup>

[Energy Policy WA](#) (a State Government agency) administers electricity licence exemptions on behalf of the Minister for Energy, who advises the Governor on licence exemptions.

### ***Class exemptions for electricity***

Class exemptions for electricity include:

- Residential and commercial on-selling, including retirement villages, strata complexes and shopping centres (transmission, distribution, and retail).<sup>9</sup>
- Caravan parks (generation, distribution, and retail).
- Generating works with a capacity under 30 megawatts.
- Most Aboriginal communities (distribution and retail).
- Electric vehicle charging stations (distribution and retail).
- Supply to commercial customers where the generating works is located on the same premises as the customer that consumes the electricity; for example, mine sites (generation, distribution and retail).
- Suppliers of electricity through solar power purchase agreements (retail).<sup>10</sup>

Class exemptions can be found in the following exemption orders:

- [Electricity Industry Exemption Order 2005](#)
- [Electricity Industry \(Caravan Park Operators\) Exemption Order 2005](#)
- [Electricity Industry \(Solar Power Purchase Agreements\) Exemption Order 2016](#)

<sup>7</sup> Electricity Act (section 7(6)).

<sup>8</sup> Electricity Act (section 8).

<sup>9</sup> On-selling occurs when an on-seller purchases electricity from a licensed retailer at a master meter and on-sells the electricity to customers behind the master meter. These customers are usually tenants of the on-seller and supplied by sub-meters on a distribution system controlled by the on-seller. The State Government has published a [factsheet](#) about the on-supply of electricity and licence exemptions.

<sup>10</sup> See the *Electricity Industry (Solar Power Purchase Agreements) Exemption Order 2016* for individual retail licence exemptions that have been granted to solar PPA suppliers.

You should review the exemption orders to determine whether you are exempt from requiring a licence under a class exemption. If you are exempt, the exemption may be subject to conditions.

If you have any questions about class exemptions or are uncertain if you are covered by a class exemption, contact Energy Policy WA, and/or consider seeking your own legal advice.

### ***Individual electricity licence exemptions***

If you do not meet the requirements for a class exemption, you can apply to Energy Policy WA for an individual licence exemption. There are several examples of individual licence exemptions in the *Electricity Industry Exemption Order 2005*.

If you are considering applying for an individual licence exemption, you should discuss the application with Energy Policy WA.

## **2.2 Gas**

There are two types of gas licence:<sup>11,12</sup>

- A distribution licence, which authorises the licensee to construct and operate a distribution system, or to operate a distribution system.
- A trading licence, which authorises the licensee to sell gas transported through a distribution system to small use customers.<sup>13</sup>

### ***Activities outside of the scope of the Gas Act***

Under the Gas Act, you are not required to hold a gas licence if:

- The gas is not distributed or sold through a distribution system. For example, the sale of bottled gas does not require a gas trading licence.
- The gas is sold to a person who is not a small use customer.

### ***Exempt gas activities***

The Governor can exempt a business or a class of businesses from the requirement to hold a gas licence.<sup>14</sup>

Energy Policy WA administers gas licence exemptions on behalf of the Minister for Energy, who advises the Governor on licence exemptions.

### ***Class exemptions for gas***

The [Energy Coordination Exemption Order 2009](#) provides class exemptions for:

- Construction of a gas distribution system by a developer for a subdivision.

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<sup>11</sup> A distribution system is a system of pipelines designed to operate at a pressure less than 1.9 megapascals (Gas Act, section 3).

<sup>12</sup> Gas Act (section 11D).

<sup>13</sup> A 'small use customer' is a customer who consumes less than one terajoule of gas per year (Gas Act, section 3).

<sup>14</sup> Gas Act (section 11H).



- On-supply of gas to residential or commercial premises, which are under the control or management of the supplier.<sup>15</sup> For example:
  - A strata company or the administrating body of a retirement village is not required to hold a gas distribution or trading licence to supply gas to the residents of the strata complex or retirement village.
  - The owner of a shopping centre is not required to hold a gas distribution or trading licence to supply gas to its commercial tenants.

You should review the exemption order to determine if you are exempt from requiring a licence under a class exemption. If you are exempt, the exemption may be subject to conditions.

If you have any questions about class exemptions or are uncertain if you are covered by a class exemption, contact Energy Policy WA, and/or consider seeking your own legal advice.

### ***Individual gas licence exemptions***

If you do not meet the requirements for a class exemption, you can apply to Energy Policy WA for an individual licence exemption.

If you are considering applying for an individual licence exemption, you should discuss the application with Energy Policy WA.

## **2.3 Water**

You are required to hold a water services licence to provide the following services:

- Water supply services, which includes potable (drinking water) water supply, and/or non-potable water supply.
- Sewerage services.
- Irrigation services.
- Drainage services.

A water licence may authorise a person to provide one or more water services.

### ***Activities that are outside of the scope of the Water Act***

Under the Water Act, some activities do not require a water licence, for example:

- Provision of water supply or sewerage services other than by reticulated conduits: for example, if you are transporting water or sewage by cart, truck or tanker.<sup>16</sup>
- Self-supply, where a person provides water to themselves within the boundaries of a single lot to a single dwelling: for example, rainwater tanks, single-lot recycled water systems, private bores, farms.

<sup>15</sup> On-supply occurs when an on-seller purchases gas from a licensed retailer at a master meter and on-sells the gas to customers behind the master meter. These customers are usually tenants of the on-seller and supplied by sub-meters on a distribution system controlled by the on-seller. The State Government has published a [factsheet](#) about the on-supply of gas and licence exemptions.

<sup>16</sup> There is one exception. If water or sewerage services are provided other than by reticulated conduits by a licensee in substitution for supply by reticulated conduits, the services are considered water services for the purposes of the Water Act. For example, if a licensee temporarily carts sewage due to a fault in the sewerage works, the carting would be covered by the licensee's licence. See *Water Services Regulations 2013* (regulations 5(2) and 5(3)).

- On-supply, where an intermediary provides a water service to a third party: for example, a shopping centre that supplies water to individual tenants.<sup>17</sup>

The Department of Water and Environmental Regulation's [website](#) provides a list of activities that do not require a water services licence.

### ***Exempt water activities***

The Minister for Water can exempt a business or class of business from the requirement to hold a water licence.<sup>18</sup>

The Department of Water and Environmental Regulation administers water licence exemptions on behalf of the Minister for Water.

### ***Class exemptions for water***

[Class exemptions](#) for water include the following activities:

- Non-potable water supply services, sewerage services and drainage services where the water service works concerned are used solely to supply single premises under the control or management of the water service provider.<sup>19</sup>
- Irrigation services where the water does not contain treated or untreated wastewater (that is, sewage).<sup>20</sup>
- Water supply services where the water does not contain any treated or untreated wastewater (that is, sewage); and is used only for industrial processing or manufacturing, mining or mineral processing, cleaning, thermal cooling, dust suppression or the construction, maintenance and cleaning of uninhabited buildings and infrastructure.
- Water supply, sewerage and drainage services to camps operated by mining, oil and gas companies or their contractors.
- Drainage services by local government in specified areas.

A class exemption for small local governments that supply non-potable water and/or sewerage services to fewer than 1,000 customers each is currently in place for 18 local government authorities.<sup>21</sup>

You should review the class exemptions to determine if you are exempt from requiring a licence. If you are exempt, the exemption may be subject to conditions.

If you have any questions about class exemptions or are uncertain if you are covered by a class exemption, you should contact the Department of Water and Environmental Regulation, and/or consider seeking your own legal advice.

<sup>17</sup> *Water Services Regulations 2013* (regulation 5(6)).

<sup>18</sup> *Water Act* (section 7).

<sup>19</sup> Conditions include that water is not used in, or is intended to be used in, 'aquatic facilities'; or the design capacity of the sewage treatment facility does not exceed 20 kilolitres a day, and the water service is not located in a proclaimed 'public drinking water source area'.

<sup>20</sup> This exemption does not apply to irrigation services where the service is in the Gascoyne, Ord, Harvey, Waroona, Collie and Preston Valley irrigation districts proclaimed under the *Rights in Water and Irrigation Act 1914*.

<sup>21</sup> The local government authorities are listed in the [exemption notice](#).

### ***Individual water licence exemptions***

If you do not fall under a class exemption, you can apply to the Department of Water and Environmental Regulation for an individual licence exemption under the Water Act. The Department of Water and Environmental Regulation publishes information on the individual [licence exemptions](#) that have been granted.

If you are considering applying for an individual licence exemption, you should discuss the application with the Department of Water and Environmental Regulation.

### 3. Licence application and assessment process

This section provides an overview of the licence application process, including:

- how you apply for a licence
- what is expected of you during the application process
- how long the application process takes
- what the licence application costs are
- how the ERA makes its decision
- how you can appeal the ERA's decision.

#### 3.1 Submitting an application

Prior to submitting a licence application, you should contact the ERA to discuss any queries about this guideline, the application process and information requirements for a licence application.

Licence applications must be lodged electronically via email at [licensing@erawa.com.au](mailto:licensing@erawa.com.au).

#### 3.2 How confidential information is treated

We understand that some of the information you will provide may be confidential. If you submit confidential information, please identify the information clearly and provide reasons for the confidentiality.

The ERA is bound by obligations on confidential information in *the [Public Sector Management Act 1994](#)* and the *[Economic Regulation Authority Act 2003](#)* (ERA Act).

Section 33 of the *[Freedom of Information Act 1992](#)* (FOI Act) requires the ERA to consult with you before disclosing commercial or business information to a third party.

The ERA will not disclose information in response to an application under the FOI Act (exempt matter), if the disclosure would reveal:

- Trade secrets of a person.<sup>22</sup>
- Other information that has commercial value to a person and that disclosure could reasonably be expected to destroy or diminish that commercial value.<sup>23</sup>
- Information about the business, professional, commercial or financial affairs of a person and disclosure could reasonably be expected to have an adverse effect on those affairs or to prejudice the future supply of information to the Government or to an agency.<sup>24</sup>

Under the FOI Act, if the ERA decides to release information containing commercial or business interests, you can request the ERA to review the decision internally, or have the decision reviewed by the [Information Commissioner](#).

<sup>22</sup> FOI Act (Schedule 1, section 4(1)).

<sup>23</sup> FOI Act (Schedule 1, section 4(2)).

<sup>24</sup> FOI Act (Schedule 1, section 4(3)).

### 3.3 Assessment process

#### **Public consultation**

When the ERA receives a licence application, the ERA will publish the applicant's licence application summary (see section 4.1) on the ERA website for public comment. The ERA may publish additional information contained in the application. Therefore, it is important that you clearly identify any confidential or commercially sensitive information supplied in the application.

The consultation process will usually run for at least 15 business days.

#### **Financial and technical assessment**

Typically, the ERA will engage both a financial and a technical consultant to assist with the assessment of whether the applicant has the financial and technical resources (electricity and gas) or ability (water) to undertake the activities to be authorised by a licence.

Consultants must provide their advice based on the information contained in the licence application. Therefore, it is important that the application is clear, consistent and contains all the necessary supporting information.

In addition to your application, the ERA and its consultants will consider any public submissions made in response to the public consultation process.

If the ERA requires further information to assess your application, you must provide any additional information requested.<sup>25</sup>

#### **Licence application assessment timeframe**

The ERA must take all reasonable steps to make a decision on whether to grant, renew or transfer a licence within 90 calendar days of receiving a complete application.<sup>26</sup> The time it takes the ERA to assess an application will vary depending on the complexity and quality of the application.

To assist us in making a timely decision, you are encouraged to:

- Liaise with the ERA prior to making an application to ensure you understand the requirements for applying for the licence(s) you need.
- Provide all the required information in line with this guideline at the time you submit your application and complete the table in Appendix 2 to clearly indicate where in the application the information to satisfy each criterion is located.
- Respond to requests from the ERA for further information in a timely manner.

#### **Licence application costs**

Under the [Economic Regulation Authority \(Licensing Funding\) Regulations 2014](#), you must pay the costs that the ERA incurs in assessing your licence application. These costs include the costs of consultants engaged by the ERA to perform technical and/or financial assessments of a licence application, producing licence maps and the gazettal of notices.<sup>27</sup>

<sup>25</sup> Electricity Act (sections 10, 16, 18 and 21), Gas Act (sections 11L, 11P, 11R and 11VA), Water Act (section 45).

<sup>26</sup> Electricity Act (section 19), Gas Act (section 11S), Water Act (sections 11, 13 and 15).

<sup>27</sup> *Economic Regulation Authority (Licensing Funding) Regulations 2014* (regulation 4(6)).

Before making an application, you can request an estimate from the ERA of the amount it will cost to assess your application. The estimate does not bind the ERA.<sup>28</sup>

The ERA will issue you with a notice (invoice) for the charges payable for assessing the application. The amount specified in the notice is payable within 30 days after the day the notice is issued. You can pay the charge by electronic funds transfer (EFT). EFT payment details will be in the notice. Alternatively, you can pay by cheque made payable to Economic Regulation Authority.

If the ERA decides to refuse to grant, renew, transfer or amend the licence, you will still be required to pay the ERA's costs to assess your application.

### 3.4 ERA decision

The ERA will inform you in writing of its decision on your licence application and publish a notice of its decision on its website. If the decision is to grant, renew, transfer or amend a licence, the ERA will also publish a notice in the Government Gazette.

If the ERA decides to refuse a licence application, the ERA must give you written notice of its decision together with a statement of reasons for the decision within 14 days of the decision.<sup>29</sup>

#### ***ERA decision criteria***

When making its decision on a licence application, the ERA must be satisfied that:

- The applicant has, and is likely to retain; or will acquire within a reasonable time after the grant, renewal or transfer and is then likely to retain, the financial and technical resources to undertake the activities to be authorised by a licence or, in the case of a water licence, the financial and technical ability to provide the service.<sup>30</sup>
- The grant, renewal, transfer or amendment of a licence would not be contrary to the public interest.<sup>31</sup>

The ERA must also have regard to the matters set out in section 26(1) of the ERA Act when making its decision.<sup>32</sup>

#### ***Public interest criteria***

When deciding if the grant, renewal, transfer or amendment of a licence is contrary to the public interest, the ERA must take into account the following matters:

#### ***Electricity and gas***

- Environmental considerations.
- Social welfare and equity considerations, including community service obligations.
- Economic and regional development, including employment and investment growth.
- The interests of customers generally or of a class of customers.

<sup>28</sup> Ibid, regulation 5.

<sup>29</sup> Electricity Act (section 23(3)), Gas Act (section 11T(3)), Water Act (section 47(1)).

<sup>30</sup> Electricity Act (section 19), Gas Act (section 11S), Water Act (section 11).

<sup>31</sup> ERA Act (section 26), Electricity Act (section 9), Gas Act (section 11K), Water Act (section 11).

<sup>32</sup> The ERA has discretion as to the weight it gives to each of the matters listed in section 26(1) in making its decision on a licence application.

- The interests of any licensee, or applicant for a licence, in respect of the area or areas to which the order, if made, would apply.
- The importance of competition in electricity/gas industry markets.
- The policy objectives of the State Government in relation to the supply of electricity/gas.

#### **Water**

- Environmental considerations, including the value of ecologically sustainable development.
- Public health considerations relating to the provision of reliable water services.

#### **Section 26(1) of the ERA Act**

Under section 26(1) of the ERA Act, the ERA must have regard to the following matters when making a decision:

- The need to promote regulatory outcomes that are in the public interest.
- The long-term interests of consumers in relation to the price, quality and reliability of goods and services provided in relevant markets.
- The need to encourage investment in relevant markets.
- The legitimate business interests of investors and service providers in relevant markets.
- The need to promote competitive and fair market conduct.
- The need to prevent abuse of monopoly or market power.
- The need to promote transparent decision-making processes that involve public consultation.

### **3.5 Appealing the ERA's decision**

If a decision or direction of the ERA under the Electricity Act affects you adversely, you may apply to the [Western Australian Electricity Review Board](#) for a review of the decision or direction.<sup>33</sup>

If a decision or direction of the ERA under the Gas Act, or a decision under the Water Act, affects you adversely, you may apply to the [State Administrative Tribunal](#) for a review of the decision or direction.<sup>34</sup>

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<sup>33</sup> Electricity Act (section 130).

<sup>34</sup> Gas Act (section 11ZH), Water Act (section 44).

## 4. Information requirements for an application

This section sets out the ERA's information requirements for a licence application.<sup>35</sup> You should contact the ERA to discuss your application, as all applications are individual and information requirements may vary.<sup>36</sup>

Your licence application must include:

- A document containing a summary of the application. The ERA will publish the summary as part of the public consultation process (see section 4.1).
- Information addressing the requirements in this section.<sup>37</sup>
- The completed licence application checklist (see Appendix 2).

Applications should be clear, comprehensive, complete and based on current information.

If an application is incomplete, the ERA will request that you provide further information. The ERA may reject an application if it contains limited or incomplete information or is not of an acceptable quality.

### 4.1 Application summary

The ERA consults publicly on licence applications by publishing a notice and a summary of the application on the ERA's website for public comment. To assist with this process, you are required to provide a summary of the application for publication by the ERA.

It is important that the application summary is detailed enough to inform the public about the content of the full application. If the application summary does not include enough information, the ERA will ask you to provide an amended version that includes the required information.

The application summary must contain the following information:

- 4.1.1 Identification of the applicant and a description of the applicant's structure and key organisational relationships.
- 4.1.2 A description of the proposed licensed service(s).
- 4.1.3 A description of any service infrastructure/works involved.<sup>38</sup>
- 4.1.4 A description of the licence operating area(s) for the proposed licensed services.<sup>39</sup>

<sup>35</sup> Electricity Act (sections 9, 10 and 19), Gas Act (section 11K, 11L and 11S), Water Act (section 10 and 11).

<sup>36</sup> Information requirements depend on several factors, including the applicant's experience, technical expertise or resources, financial resources and public interest matters.

<sup>37</sup> It is helpful to provide supporting information about financial resources (including a working financial model in Excel), technical resources, and information that addresses the public interest criteria in separate documents or, if applicable, appendices to the application.

<sup>38</sup> Please use the following measures consistently in a licence application: megawatts (MW) for electricity, megajoules/gigajoules/terajoules (MJ/GJ/TJ) for gas and kilolitres/megalitres/gigalitres (kL/ML/GL) for water.

<sup>39</sup> For gas licence applications, this should identify the relevant gas supply areas: Kimberley, Pilbara, Gascoyne, Mid-West, Wheatbelt, Goldfields-Esperance, Great Southern and/or Coastal. See section 4.6.2 for further information on gas supply areas.



- 4.1.5 Information about the status of other essential regulatory and contractual approvals required to commence operation under the licence.
- 4.1.6 Information on how the licensed activities will be funded. This can be high level and does not need to include commercially sensitive or confidential information (see section 4.3).
- 4.1.7 Information about why grant of a licence would not be contrary to the public interest (see section 3.4).<sup>40</sup>
- 4.1.8 If you are applying for a water services licence to supply potable (drinking) water, information on the source of the potable water and if it will be covered by a drinking water source protection plan.<sup>41</sup>

You should structure the summary in accordance with sections 4.2 to 4.6 of this guideline.

## 4.2 Corporate information

The application must contain the corporate information set out in this section.

- 4.2.1 A description of the licence applicant, including:
  - a. The legal name and the trading name of the applicant, and the Australian Business Number or Australian Company Number.
  - b. The applicant's registered office address, contact details, principal place of business (if different from the registered office), and the name and contact details of a person the ERA can contact about the application.
  - c. The applicant's profile, including the date it was founded, its history, the number of employees and a description of the applicant's core activities.
  - d. Type of company.<sup>42</sup>
  - e. A list of all company directors, partners or principals.
  - f. A description of company ownership, such as the proportions of equity held by the individuals involved in the company.
  - g. Copies of any relevant articles of association, constitution or company registration details for the applicant and any associated or controlled entities.
- 4.2.2 A list of any associated and/or controlled entities including, where relevant, any parent companies and a description of the degree of control exercised by any associated entity or parent company over the applicant, and how it exercises that control.

<sup>40</sup> Including any public consultation or stakeholder engagement processes undertaken on the licence project.

<sup>41</sup> For each drinking water source area in Western Australia, the Department of Water and Environmental Regulation develops [drinking water source protection reports](#), including assessments, plans and reviews, or land use and water management strategies prepared in conjunction with the Western Australian Planning Commission.

<sup>42</sup> For instance, a public company, group of companies, private company, joint venture, other body corporate, partnership, unincorporated association, sole trader or other entity.

- 4.2.3 A statutory declaration from all company directors, partners or principals of the company declaring that they have not been or would not be disqualified from managing corporations by any provision of the *Corporations Act 2001 (Cwlth)*.
- 4.2.4 A declaration certifying that the information provided in the application is correct (see Appendix 1).<sup>43</sup>

## 4.3 Financial information

The application must contain the financial information set out in this section.<sup>44</sup>

### ***Current financial position***

4.3.1 The following financial reports:

- a. The most recent audited general purpose financial report for the applicant (with accounts) that complies with the applicable Australian Accounting Standards Board Standards, including the auditor's report.<sup>45</sup> Where available, you should provide audited financial reports for the last three years, accompanied by the relevant audit reports, Director's reports, and Director's declarations; or
- b. New companies that cannot provide financial reports should provide financial information (such as interim accounts) to demonstrate that they have the financial resources to cover their potential financial exposure;<sup>46</sup> or
- c. If the applicant is a subsidiary company, audited general purpose financial reports for the parent company(s), covering the past three years.<sup>47</sup>

4.3.2 A copy of any other document, record or information that the applicant has been required to submit to the Australian Securities and Investment Commission (ASIC) under chapter 2M of the *Corporations Act 2001 (Cth)* during the three years prior to the date the application is submitted to the ERA (this is in addition to the financial reports mentioned in 4.3.1).<sup>48</sup>

If no information has been submitted under chapter 2M, the application must include a statement that the applicant has not been required to submit any documents, records or information under chapter 2M.

4.3.3 A written declaration from an independent auditor, or the applicant's principal financial institution, stating that:<sup>49</sup>

<sup>43</sup> The authorisation must be signed by a person authorised to do so by the company (applicant).

<sup>44</sup> Electricity Act (section 19), Gas Act (section 11S), Water Act (section 11).

<sup>45</sup> Reporting entities that are not legally required to follow Australian Accounting Board Standards must at least comply with the Australian Accounting Standards. Applicants must comply with International Accounting Standards if no accounts exist that complies with Australian Accounting Board Standards or Australian Accounting Standard.

<sup>46</sup> Special purpose vehicles that are supported by a parent company should provide evidence that the parent company has financially committed to the project.

<sup>47</sup> The reports should comply with the applicable Australian Accounting Board Standards, Australian Accounting Standards or International Accounting Standards.

<sup>48</sup> Information on what companies must provide financial reports to ASIC is on the [ASIC website](#).

<sup>49</sup> This requirement does not apply to an applicant that is a new entity with no trading history, established for the purpose of carrying out the activities to be authorised by the licence.

- a. An insolvency official has not been appointed in respect of the business or any property of the business.
- b. No application or order has been made, resolution has been passed, or steps have been taken to pass a resolution to wind up or dissolve the business.
- c. It is not aware of any other factors that would impede the applicant's ability to finance the activities required by the licence.

4.3.4 Information about any risks to the applicant's financial position (such as potential contingent liabilities or pending litigation).

### **Financing**

4.3.5 Evidence that the applicant can finance the assets and investment necessary to undertake the activities to which the licence relates, such as:

- a. Details of the type of funding or financial support, including any secured funding, mezzanine debt, vendor finance, venture capital or bank guarantees.
- b. A description of the relevant facility(s), including supporting evidence of credit lines and terms (to maturity), repayment schedules and any financial covenants associated with the facility(s).
- c. A description and copies of any contractual arrangements that define relationships between the licence applicant and any related entities, including in relation to shared resources, guarantees, revenue flows, obligations and/or responsibilities.<sup>50</sup>

### **Financial projections**

4.3.6 A description of the intended services, related business activities and the market(s) for the proposed licensed services.

4.3.7 A detailed financial model in a working spreadsheet with projected revenue and expenditure for each of the proposed services for at least five years, or over the life of the project, to demonstrate the financial security and feasibility for the proposed licensed activities.<sup>51</sup>

4.3.8 Supporting evidence for all key assumptions, and identification of key risks, and relevant risk management strategies or measures.<sup>52</sup>

### **Financial policies**

4.3.9 Copies of the applicant's financial policies, such as accounting policies, internal and external auditing policies, risk management policies and internal control procedures.

4.3.10 The pricing policies, methods, procedures or principles that the applicant proposes to apply in determining its prices or charges.<sup>53</sup>

<sup>50</sup> For example, alliance contracts, associate contracts, establishment contracts.

<sup>51</sup> Inclusion of a sensitivity analysis for key risks is preferable, having regard to section 4.3.8.

<sup>52</sup> For example, for projects that rely on uptake from new developments, information should include evidence about lot sales and uptake of the electricity, gas or water service.

<sup>53</sup> This is a statutory requirement for applicants for a gas trading licence (Gas Act, section 11L(2)(b)), but it is also relevant for other licence applications.

## 4.4 Technical information

The application must contain the technical information set out in this section.<sup>54</sup>

### Assets<sup>55</sup>

- 4.4.1 A description of the physical environment of the proposed activity, including all land and areas affected by the proposed application.
- 4.4.2 A description of the infrastructure that will be licensed or used to deliver the licensed services if you are applying for an electricity retail licence or gas trading licence. Where applicable, include actual or estimated numbers of customers by type.<sup>56</sup>
- 4.4.3 A detailed construction schedule of any proposed construction activities, including proposed commencement and completion dates of the construction activities and commissioning of works. Construction activities must specify the location of any areas temporarily or permanently affected by the activities.<sup>57</sup>
- 4.4.4 A description of any actual or proposed metering arrangements for the proposed service(s), including agreements with network service providers and/or metering agents.
- 4.4.5 A detailed description of the asset management system, including:
  - a. The measures to be taken for the proper maintenance of assets used in the provision of the electricity supply, gas supply or water services, and for undertaking maintenance and operation of any works.
  - b. The existing or proposed asset registers, risk assessments, asset management plans, quality management systems, construction standards, maintenance manuals/plans/schedules, asset management information systems and data management.

Note: You can find detailed information about the processes you should address in an asset management system in the ERA's [Audit and Review Guidelines – Electricity and Gas Licences](#) and [Audit and Review Guidelines – Water Licences](#), in particular in Appendix 5.<sup>58</sup>

### ***Additional requirements for gas licence applications***

- 4.4.6 A description of the methods or standards that the applicant proposes to apply in supplying gas. This is a specific requirement of section 11L(2)(c) of the Gas Act and can be met by providing information listed in other parts of this guideline, such as:

<sup>54</sup> Electricity Act (section 19), Gas Act (section 11S), Water Act (section 11).

<sup>55</sup> This section applies to electricity retail and gas trading licence applications to a limited extent. For example, section 4.4.5 does not apply to these applications.

<sup>56</sup> For instance, customer relationship management systems and software, billing systems and software, customer management or billing services provided by related entities or third-party providers, as well as information on the numbers of small use and large use customers, and business or residential customers.

<sup>57</sup> This information is not required for an electricity retail licence or gas trading licence application or where the application relates to existing assets only.

<sup>58</sup> This information is not required for an electricity retail licence or gas trading licence application.

- a. Documents that describe the design and operation of the assets that will supply the gas (see sections 4.4.1 to 4.4.5).
- b. Standard form contract, and/or non-standard contracts (see section 4.4.10).
- c. Customer information policies and procedures (see section 4.4.13).

4.4.7 A description of the nature and extent of the construction, alteration, operation or maintenance of a distribution system that the applicant for a gas distribution licence has undertaken or intends to undertake for the transportation of gas.<sup>59</sup>

#### ***Additional requirements for water services licence applications***

4.4.8 A description of the methods or principles that the applicant proposes to apply in the provision of the service. This is a specific requirement of section 10(2)(b)(ii) of the Water Act and can be met by providing information listed in other parts of this guideline, such as:

- a. Documents that describe the design and operation of the assets that will provide the water service(s) (see section 4.4).
- b. Standard customer contracts, or terms and conditions for the provision of the water service(s) (see sections 4.4.11 to 4.4.12).
- c. Customer information policies and procedures (see section 4.4.13).

#### ***Customer contracts***

In some circumstances, it is a pre-condition for the grant, renewal or transfer of a licence that the applicant has a standard form contract approved by the ERA.<sup>60</sup> You should contact the ERA to discuss the requirements for standard form contracts. Approved standard form contracts for current licensees are available on the ERA's website.

#### ***Electricity***

4.4.9 Electricity retail licence applicants (electricity retail licence or integrated regional licence for retail services) proposing to sell electricity to small use customers are required to submit a copy of their proposed standard form contract with their licence application.<sup>61</sup> The [Electricity Industry \(Customer Contracts\) Regulations 2005](#) prescribe the matters that an electricity standard form contract must address.

#### ***Gas***

4.4.10 Gas trading licence applicants are required to submit a copy of their proposed standard form contract with their licence application.<sup>62</sup> The [Energy Coordination \(Customer Contracts\) Regulations 2004](#) prescribe the matters a gas standard form contract must address.

<sup>59</sup> Gas Act (section 11L(2)(d)).

<sup>60</sup> Electricity Act (section 50), Gas Act (section 11WE).

<sup>61</sup> Electricity Act (section 49).

<sup>62</sup> Gas Act (section 11WD).

**Water**

- 4.4.11 A copy of the applicant's standard terms and conditions for the provision of the service.<sup>63</sup>
- 4.4.12 If the applicant proposes to supply water services under a standard customer contract, a copy of proposed standard customer contract.<sup>64</sup>
- 4.4.13 If the applicant proposes to supply water services under non-standard terms and conditions, a copy of the proposed non-standard terms and conditions of service.

**Customer information<sup>65</sup>**

- 4.4.14 Evidence of compliance with relevant supply industry methods, quality standards and codes such as compliance with relevant consumer protection arrangements, including:
- a. A description of how the applicant will manage customer accounts.
  - b. A description of customer information policies (for example, tariffs, fees and charges), customer consultation processes, account enquiries processes, payment arrangements and financial hardship policies and procedures, complaints and dispute resolution processes, account termination procedures and customer performance measures.<sup>66</sup>
  - c. A description of the customer information management systems used by the applicant, including any billing systems.

**Additional requirement for water services licence applicants**

- d. If the applicant proposes to provide potable (drinking) water or sewerage services to residential customers, a copy of the applicant's proposed financial hardship policy and supporting information<sup>67,68,69</sup>
- 4.4.15 Evidence of a commitment to remain or become a member of an approved Energy and Water Ombudsman Scheme and adhere to any decisions of the [Energy and Water Ombudsman](#), where the applicant applies for:

<sup>63</sup> Water Act (Section 10(2)(b)(iv)).

<sup>64</sup> Water Act (Section 10(2)(b)(v)).

<sup>65</sup> Electricity Act (section 99), Gas Act (section 11ZQF), Water Act (section 70).

<sup>66</sup> The ERA's [Financial Hardship Policy Guidelines – Electricity & Gas Licences](#) provide guidance to energy retailers on preparing a financial hardship policy and procedures.

<sup>67</sup> [Water Services Code of Conduct \(Customer Service Standards\) 2018](#). Clause 29 of the code requires that a licensee's financial hardship policy must be in effect by the end of the six-month period starting on the day the licence is granted. This means that the applicant can choose to submit its policy with the licence application, or after the licence is granted.

<sup>68</sup> The ERA's [Financial Hardship Policy Guidelines for Water Services](#) provide guidance to water service providers on preparing a financial hardship policy and supporting information. A water hardship policy must comply with this guideline and be approved by the ERA.

<sup>69</sup> The [Water Services Code of Practice \(Family Violence\) 2020](#) requires a licensee that provides a water service to a residential customer to have a family violence policy in place on the day the licence is granted to the applicant. The ERA does not approve this policy and it is not a requirement to include it in your application, but you should make yourself aware of the obligations the code places on licensees.

- a. An electricity retail, distribution or integrated regional (for retail or distribution services) licence for the supply of electricity to small use customers.<sup>70</sup>
- b. A gas trading or distribution licence.<sup>71</sup>
- c. A water services licence.<sup>72</sup>

Note: The Electricity, Gas and Water Acts provide that the ERA may only grant the above licences, if the licensee is or will become a member of the Energy and Water Ombudsman Scheme.<sup>73,74</sup>

If you are required to become a member of the Energy and Water Ombudsman Scheme, you should discuss your membership application with the Energy and Water Ombudsman while preparing your licence application for the ERA.

### **Relevant experience**

4.4.16 A description of the applicant's prior experience and/or appropriate training related to the nature of the proposed activity, including a list of the key personnel used to install and/or operate and/or maintain the supply of electricity, gas or water services, with a summary of the key qualifications of the key personnel.

4.4.17 Where the applicant will use contractors to provide services under the licence(s), please provide:

- a. The applicant's policy on the use of sub-contractors.
- b. Evidence of agreements to provide services.
- c. A description of the contractor's experience and technical capacity, including a list of key personnel and their qualifications.

### **Other licences**

4.4.18 A description of any licences or approvals held by the applicant, and its associated or controlled entities, in Australia to supply electricity, gas or water services.

4.4.19 Information on any compliance action taken by a regulator in Australia in relation to the applicant, or its associated or controlled entities, including:

- a. Details of any licence breaches where a regulator imposed a penalty or an enforcement order on the licensee in the last 10 years.
- b. Details of any current or ongoing investigation of alleged breaches of those licences.

<sup>70</sup> Electricity Act (section 99).

<sup>71</sup> Gas Act (section 11ZQF).

<sup>72</sup> Water Act (section 70).

<sup>73</sup> Electricity Act (section 100), Gas Act (section 11ZQG), Water Act (section 70).

<sup>74</sup> Potential licensees should note that the Ombudsman's [constitution](#) (section 8.1) requires that "[an] Applicant shall be Eligible to become a Member only if the Applicant is the holder of one or more Licences".

### ***Other regulatory approvals***

4.4.20 A description and evidence of the status of:

- a. Applications for environmental, planning and health approvals, permits or licences.
- b. An agreement with the electricity or gas network operator for network access (this applies to applicants for electricity generation or retail licences, and gas trading licences).
- c. It is preferable that you progress these applications and agreements as far as possible before applying for a licence. If you receive approvals, permits or licences from other regulatory bodies after you have submitted your licence application to the ERA and before the ERA makes its decision, forward copies of the final approvals to the ERA to include in your application.

## **4.5 Public interest information**

4.5.1 Your application must include information about the relevant public interest matters listed in section 3.4 to support the grant, renewal, transfer or amendment of the licence.

## **4.6 Licence operating areas**

All licences must have a licence (electricity), supply (gas) or operating (water) area.<sup>75</sup>

### ***Electricity and water***

An application for an electricity or water licence must include:

4.6.1 A description of the proposed licence or operating area with enough detail for the ERA to develop a map of the area. Each map should:

- a. Identify the location of the infrastructure and cadastral boundaries.<sup>76</sup> The map(s) should include any areas where infrastructure extends over private or public land. In the case of electricity retail or gas trading licences, maps should identify where supply will take place.

Operating area maps for water supply services (potable and/or non-potable water supply) should include the infrastructure for the source of the water (for example, bores and pipeline infrastructure that transport the water to a water treatment plant).

Note: If your application is for an electricity retail licence to supply electricity to customers on the South West Interconnected System, the ERA will use the [map](#) from Western Power's electricity distribution licence (EDL1) for your licence area map, so you do not need to provide map information. If you wish to use a different map, please let the ERA know.

- b. Unless otherwise agreed with the ERA, be submitted electronically both in pdf format and in one of the following digital formats: dgn, dxf, dwg, or shapefile.

<sup>75</sup> Electricity Act (section 5), Water Act (section 9).

<sup>76</sup> A map showing information from the land register, such as the boundaries of land parcels.



Note: If you provide map data in a file format other than shapefile, you may incur a cost to have the files converted to shapefile by Landgate, which prepares licence maps for the ERA and requires shapefile.

## Gas

4.6.2 An application for a gas licence must identify the geographical area(s) of Western Australia that you propose to supply gas in. These are known as supply areas.<sup>77</sup>

4.6.3 The ERA can produce supply area maps for most gas licensees, as the supply areas are defined in legislation by eight distinct areas within Western Australia, which are based on local government boundaries.<sup>78</sup> The supply areas are:

- Coastal (including the Perth metropolitan area)
- Great Southern
- Goldfields-Esperance
- Kimberley
- Pilbara
- Gascoyne
- Mid-West
- Wheatbelt.

You can find examples of maps on the ERA's website. Applicants are encouraged to discuss mapping requirements with the ERA before applying for a licence.

## 4.7 Licence duration

The maximum term of each licence type is specified in legislation:<sup>79</sup>

### Licence terms

Industry	Licence type	Maximum term
Electricity	Retail	15 years
Electricity	Generation, transmission, distribution or integrated regional	30 years
Gas	Trading	10 years
Gas	Distribution	21 years
Water	Water services (potable water supply, non-potable water supply, sewerage, drainage and/or irrigation services)	25 years

<sup>77</sup> Gas Act (section 11E).

<sup>78</sup> [Energy Coordination \(Supply Areas\) Order 2009](#) and [Energy Coordination \(Coastal Supply Area\) Order 2000](#) (the 2000 order amended some of the supply areas in the 2009 order).

<sup>79</sup> Electricity Act (section 15), Gas Act (section 11O), Water Act (section 14).

If you would like the term of your licence to be less than the maximum allowed under the relevant Act, please indicate in your application how long you would like the licence term to be.

## 5. Licence amendments, renewals and transfers

If you already hold a licence, you may apply to the ERA to amend, renew or transfer the licence.<sup>80</sup> The ERA may also initiate a licence amendment.

Under the *Economic Regulation Authority (Licensing Funding) Regulations 2014*, you must pay the costs that the ERA incurs in assessing your application to amend, renew or transfer a licence.<sup>81</sup> The ERA does not recover its costs for licence amendments that it initiates. See section 3.3 for further information.

### 5.1 Licence amendments

#### *Licence amended on request by the licensee*

The process for licence amendments follows that of the application process for the grant of a licence (see section 3).

The information required for a licence amendment will vary depending on the nature of the amendment. For instance, if your proposed amendment seeks to substantially change the nature and scope of an existing licence, the application may be similar to an application for a new licence.

For minor amendments, a short, succinct application may be sufficient (and no public consultation may be required). Therefore, it is important that you contact the ERA to discuss the application before you apply for the amendment.

#### *Licence amended on the initiative of the ERA*

The ERA will consult with both the licensee and the public on licence amendments that it initiates.

The ERA periodically reviews its licences to ensure they are fit for purpose. These reviews may result in the ERA initiating amendments to licences.

Licences contain provisions that set out how the ERA may amend the licence, including any notification requirements. Subject to the terms of the licence, the ERA will provide licensees with an opportunity to comment on any proposal to amend their licence.

### 5.2 Licence renewals

You must apply to renew your licence before it expires if you want to continue to operate under the licence.<sup>82</sup>

- If an electricity or gas licence expires before it is renewed, the licensee cannot operate until the licence is renewed.
- If a water licence expires before it is renewed, it will continue to be in force until the ERA makes a decision on the renewal application, providing the renewal application was submitted to the ERA before the licence expired.<sup>83</sup>

<sup>80</sup> Electricity Act (sections 21 and 22), Gas Act (sections 11VA and 11W), Water Act (sections 17 and 18).

<sup>81</sup> *Economic Regulation Authority (Licensing Funding) Regulations 2014* (regulation 4(1)).

<sup>82</sup> Electricity Act (sections 16 and 19), Gas Act (sections 11P and 11S), Water Act (section 13).

<sup>83</sup> Water Act (section 13(4)).

The renewal of a licence is subject to the same financial, technical and public interest tests as the grant of a licence (see section 3). Six months before your licence is due to expire, the ERA will write to you to inform you what the information requirements are for an application to renew a licence.

See section 4.7 for the maximum terms (in years) that the ERA can renew a licence for.

### **5.3 Licence transfers**

The process for licence transfers is similar to the application process for the grant of a licence.<sup>84</sup>

To transfer a licence, the existing licensee must advise the ERA in writing that it wishes to transfer its licence.

The new entity receiving the licence will be subject to the same financial, technical and public interest tests as a new licence applicant. Therefore, an application for transfer must address the same criteria (see section 3) and information requirements (see section 4) as an application for a new licence.

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<sup>84</sup> Electricity Act (sections 18 and 19), Gas Act (section 11R and 11S), Water Act (section 15).

## 6. Licence surrenders and cancellations

If you hold an electricity or gas licence you can surrender it to the ERA.

There are no provisions in the Water Act for the holder of a water licence to surrender its licence. However, you can apply to the ERA to have your water licence cancelled.

There is a separate process for the Governor to initiate the cancellation of an electricity, gas or water licence. Further information is in section 8.2.

### 6.1 Surrendering an electricity or gas licence

The process to surrender an electricity or gas licence is set out in your licence. If you are considering surrendering your licence, please contact the ERA.

### 6.2 Cancelling a water licence

You can apply for your water licence to be cancelled at any time by providing written notice to the ERA.<sup>85, 86</sup>

The ERA will consider your application and decide whether to cancel the licence.

You are required to pay the ERA's costs to process an application to cancel a water licence. Before making an application, you can request from the ERA an estimate of the amount it will cost to assess your application. The estimate does not bind the ERA.<sup>87</sup>

If you are considering applying to have your water licence cancelled, you should take note of the following requirements under section 36 the Water Act:

#### **36. Provision of a water service ceasing — duty to leave system in safe condition**

- (1) If a licensee ceases to provide a water service in an area, the former licensee –
- (a) must ensure that any water service works provided or operated by the former licensee for the purposes of the licence in the area are left in a safe condition; and
  - (b) must not remove any part of the works except with the approval of the Minister.

Penalty: a fine of \$30 000.

<sup>85</sup> Clause 3.6.1 of water licences requires the request to be made in writing.

<sup>86</sup> Water Act (section 18).

<sup>87</sup> *Economic Regulation Authority (Licensing Funding) Regulations 2014* (regulations 4 and 5).

## 7. Licensee obligations

### 7.1 Licence conditions

When you are granted a licence, you are subject to the conditions of the licence.<sup>88</sup> The Electricity, Gas and Water Acts impose a number of licence conditions on licensees and provide the ERA with powers to impose additional licence conditions.<sup>89</sup>

While you may be subject to licence conditions specific to your circumstances, you will typically be subject to the standard licence conditions the ERA imposes on all licensees. You are encouraged to review the relevant licences on the ERA's website to understand the standard terms and conditions that are likely to apply in your licence.<sup>90</sup>

To assist you in complying with your licence, the ERA publishes regulatory guidelines, compliance reporting manuals and other helpful documents on its website.

### 7.2 Reporting requirements

#### *Performance and operational audits and asset management system reviews*

Under the Electricity, Gas and Water Acts, licensees are required to provide the ERA with:<sup>91</sup>

- An audit conducted by an independent expert, not less than once in every 24-month period (or any longer period as the ERA allows).
- A report by an independent expert as to the effectiveness of the asset management system, not less than once in every 24-month period (or any longer period as the ERA allows).<sup>92</sup>

More information about audits and asset management system reviews can be found in the [2019 Audit and Review Guidelines - Electricity and Gas Licences](#) and the [2019 Audit and Review Guidelines - Water Licences](#) on the ERA website.

#### *Annual compliance reporting*

All licensees are required to provide a compliance report to the ERA at the end of each financial year. The purpose of the report is for a licensee to self-report any non-compliances that occurred during the year. The ERA writes to licensees each year to remind them of this requirement.

<sup>88</sup> Electricity Act (sections 11, 12, 13, 14, 15, 54, 58, 65, 76, 82, 101 and Schedule 1), Gas Act (sections 11M, 11O, 11WG, 11Y, 11Z, 11ZA, 11ZAJ, 11ZPP, 11ZQH and Schedule 1A), Water Act (sections 12, 14, 21, 22, 23, 24, 25, 26, 27, 29 and 30).

<sup>89</sup> Electricity Act (sections 11, 12, 13, 14, 54, 58, 65, 76, 82, 101 and Schedule 1), Gas Act (sections 11M, 11WG, 11Y, 11Z, 11ZA, 11ZAJ, 11ZPP, 11ZQH and Schedule 1A), Water Act (sections 12, 21, 22, 23, 24, 25, 26, 27, 29 and 30).

<sup>90</sup> Current [electricity](#), [gas](#) and [water](#) licences are available on the ERA website.

<sup>91</sup> Electricity Act (sections 13 and 14), Gas Act (sections 11Y and 11ZA), Water Act (sections 24 and 25).

<sup>92</sup> An asset management system review is not required for a gas trading licence or an electricity retail licence (or the retail component of an electricity integrated regional licence).

The compliance reporting requirements for each type of licence are set out in the [Electricity](#), [Gas](#) and [Water](#) Compliance Reporting Manuals on the ERA website.

### **Annual performance reporting**

Most licensees are required to provide a performance report to the ERA at the end of each financial year.<sup>93</sup> The ERA writes to the relevant licensees each year with details of the performance data that they need to submit to the ERA in the report.

The reporting requirements for each type of licence are set out in the [Electricity](#), [Gas](#) and [Water](#) Licence Performance Reporting Handbooks on the ERA website.

## **7.3 Licence fees and charges**

The [Economic Regulation Authority \(Licensing Funding\) Regulations 2014](#) prescribes fees and charges applicable to licensees. It is a condition of all licences that the licensee must pay the fees and charges.

You will also incur costs associated with the periodic licence performance and operational audits and asset management system reviews.

### **Annual licence fees**

Licensees must pay ongoing (annual) licence fees. The annual licence fee is payable within one month of the grant of a licence and annually thereafter.

#### **Annual licence fees<sup>94</sup>**

<b>Licence type</b>	<b>Licence fee</b>
Electricity distribution	\$2,732
Electricity generation	\$2,406
Electricity retail	\$3,416
Electricity transmission	\$2,406
Gas distribution	\$2,778
Gas trading	\$3,105
Water services	\$2,885

#### **Electricity integrated regional licence fees<sup>95</sup>**

Integrated regional licence fees consist of the aggregate of the fee for each activity (generation, transmission, distribution and/or retail) authorised under the licence.

### **Standing charges**

You must pay an ongoing (standing) charge to recover the costs incurred by the ERA in the performance of its licensing functions. The standing charge recovers the costs associated

<sup>93</sup> Performance reports are not required for electricity transmission and generation licensees, and electricity retail licensees that supply large use customers only.

<sup>94</sup> *Economic Regulation Authority (Licensing Funding) Regulations 2014* (regulation 6(2)).

<sup>95</sup> *Ibid*, regulation 3(2).

with licencing activities not attributable to an individual licence application. These costs relate to the general administration of the licensing regime and include, but are not limited to, the following:

- Overheads associated with the ERA's corporate and management activities that are associated with administering the licensing regime.
- Annual reporting on the performance of licensees.
- Review and amendment of codes of conduct for electricity, gas and water customers.
- Reviews of licence templates.

The ERA sends invoices quarterly for standing charges and the charge is payable within 30 days of the date of the invoice.

For the ERA to calculate the standing charges, licensees are required to report annually on the number of units relevant to its licence (as outlined in the table below). The number of units reported by a licensee will determine the proportion of the standing charge within that class of licence that the licensee is liable to pay.

#### ***Standing charge data***

<b>Class of licence</b>	<b>Units</b>
Electricity distribution	Kilometres of distribution line
Electricity generation	Megawatts of capacity
Electricity retail	Number of customers
Electricity transmission	Kilometres of transmission line
Gas distribution	Kilometres of distribution line
Gas trading	Number of customers
Water services	Number of customers

For further information on the calculation of the standing charge, refer to regulation 7 of the *Economic Regulation Authority (Licensing Funding) Regulations 2014*.



## 8. Enforcement and licence cancellation

### 8.1 Enforcement

If the ERA believes that you have contravened the terms and conditions of your licence, the ERA may send a notice to you requiring the contravention to be rectified. If the ERA is not satisfied that you have reasonably complied with the notice, the ERA may do one or more of the following:<sup>96</sup>

#### **Electricity and Gas**

- serve the licensee a letter of reprimand
- order the licensee to pay a penalty of up to \$100,000
- cause the contravention to be rectified to the satisfaction of the ERA.

#### **Water**

- order the licensee to pay a penalty of up to \$150,000
- remedy the failure
- amend the water licence.

The ERA may authorise persons to enter any premises to rectify the contravention. In this case, the ERA may recover the costs for rectifying the contravention from the licensee.

Before the ERA can impose a penalty or cause action to rectify a contravention, we must notify you (as the licensee) and give you a reasonable opportunity to make a submission on the matter. However, if the public's health or safety is or may be at risk, the ERA does not need to provide you with notice and you are not entitled to make a submission on the matter.

### 8.2 Licence cancellation by the Governor

The Governor may cancel your licence.<sup>97</sup> If the Governor cancels your licence, you may seek judicial review of that decision in the Supreme Court of WA.

#### **Electricity and Gas**

The Governor may cancel an electricity or gas licence if satisfied that the licensee:

- Has not complied with a term or condition of the licence and the failure is material in terms of the operation of the licence (as a whole).<sup>98</sup>
- Has failed to pay a licence fee.
- Is an externally administered corporation within the meaning of the *Corporations Act 2001* (Cth).

or

<sup>96</sup> Electricity Act (sections 32, 33, and 34), Gas Act (sections 11ZB, 11ZC, 11ZD, 11ZOR, 11ZOS and 11ZOT), Water Act (sections 31, 32 and 33).

<sup>97</sup> Electricity Act (section 35), Gas Act (section 11ZE), Water Act (section 34).

<sup>98</sup> The relevant Minister must have given the licensee notice of the failure and the opportunity to remedy that failure or to show cause why the licence should not be cancelled.

- Has, within a period of 24 months, been convicted of more than three offences for which the prescribed punishment is a fine of \$10,000 or more or imprisonment for 12 months or more.

### **Water**

The Governor may cancel a water licence if the Minister for Water is satisfied that the licensee:

- Has not complied with a condition of the licence and the failure is material in terms of the operation of the licence.<sup>99</sup>
  - Is an externally administered corporation within the meaning of the *Corporations Act 2001* (Cth), or is otherwise in the process of being wound up, is a bankrupt or is a person whose affairs are under insolvency laws.
  - Has, within a period of 12 months, been convicted of more than three offences for which the statutory penalty is a fine of \$30,000 or more or imprisonment for 12 months or more.
- or
- Has ceased to exist.

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<sup>99</sup> The relevant Minister must have given the licensee notice of the failure and the opportunity to remedy that failure or to show cause why the licence should not be cancelled.



## Appendix 2 – Licence application checklist

To assess a licence application for a new licence or the renewal or transfer of an existing licence, specific information about the proposed operating area and corporate, financial and technical information is required. You must include this completed document with your application. Please ensure the information in the 'document title and 'Attachment / page number of application' column is accurate.

### *Application summary (refer to section 4.1)*

Guideline reference	Information required	Information provided	Document title	Attachment / Page number of application
4.1.1	Identity of applicant and a description of its structure and key organisational relationships	<input type="checkbox"/>		
4.1.2	A description of the proposed service(s) or service model	<input type="checkbox"/>		
4.1.3	A description of the service infrastructure/works involved	<input type="checkbox"/>		
4.1.4	A description of the licence operating area(s)	<input type="checkbox"/>		
4.1.5	Information on the status of other essential regulatory and contractual approvals required to commence operation under the licence	<input type="checkbox"/>		
4.1.6	Information on how the licensed activities will be funded	<input type="checkbox"/>		
4.1.7	Information about why the grant of a licence would not be contrary to the public interest	<input type="checkbox"/>		
4.1.8	If you are applying for a water services licence to supply potable (drinking) water, information on the source of the potable water and if it will be covered by a drinking water source protection plan	<input type="checkbox"/>		

**Corporate information required (refer to section 4.2)**

Guideline reference	Information required	Information provided	Document title	Attachment / Page number of application
4.2.1(a)	Identity of applicant including ABN or ACN	<input type="checkbox"/>		
4.2.1(b)	Address and contact details for the applicant, including a primary contact person	<input type="checkbox"/>		
4.2.1(c)	Entity profile, including a description of core activities	<input type="checkbox"/>		
4.2.1(d)	Description of company type	<input type="checkbox"/>		
4.2.1(e)	A list of all company directors or principals of the applicant	<input type="checkbox"/>		
4.2.1(f)	Description of company ownership	<input type="checkbox"/>		
4.2.1(g)	Any relevant articles of association, constitution or registration details for the applicant and associated or controlled entities	<input type="checkbox"/>		
4.2.2	A list of any associated and/or controlled entities, and a description of control exercised	<input type="checkbox"/>		
4.2.3	A statutory declaration from all the company directors or principals of the entity that they have not been or would not be disqualified under the <i>Corporations Act 2001 (Cwlth)</i> from managing corporations	<input type="checkbox"/>		
4.2.4	A declaration certifying that the information provided is correct (included in Appendix 1 of this guideline)	<input type="checkbox"/>		

**Financial information required (refer to section 4.3)**

Guideline reference	Information required	Information provided	Document title	Attachment / Page number of application
<b>Current financial position</b>				
4.3.1(a)	Most recent audited general purpose financial reports	<input type="checkbox"/>		
4.3.1(b)	For new entities, financial information which demonstrates that the applicant has an acceptable financial standing/capacity commensurate with its potential financial exposure	<input type="checkbox"/>		
4.3.1(c)	Where the applicant is a subsidiary company, financial reports for the parent company	<input type="checkbox"/>		
4.3.2	Copies of any information submitted to ASIC under chapter 2M of the Corporations Act 2001 (Cwlth) over the past three years	<input type="checkbox"/>		
4.3.3	Declaration from independent auditor or principal financial institution	<input type="checkbox"/>		
4.3.4	Information about any risks to the applicant's financial position	<input type="checkbox"/>		
<b>Financing</b>				
4.3.5	Evidence that the applicant can finance the assets and investment necessary to undertake the licensed activities	<input type="checkbox"/>		
<b>Financial projections</b>				
4.3.6	Intended services, related business activities and markets	<input type="checkbox"/>		
4.3.7	Projected revenue and expenditure figures for at least five years	<input type="checkbox"/>		
4.3.8	Information about assumptions, risks and risk management strategies	<input type="checkbox"/>		
<b>Financial policies</b>				
4.3.9	Financial policies	<input type="checkbox"/>		

Guideline reference	Information required	Information provided	Document title	Attachment / Page number of application
4.3.10	Pricing policies, methods and procedures	<input type="checkbox"/>		
<b>Assets</b>				
4.4.1	Description of the physical environment of the proposed activity and its immediate vicinity	<input type="checkbox"/>		
4.4.2	Description of the supply infrastructure and interconnected infrastructure systems	<input type="checkbox"/>		
4.4.3	Construction schedule (where applicable)	<input type="checkbox"/>		
4.4.4	Details of the actual or proposed metering arrangements (where applicable)	<input type="checkbox"/>		
4.4.5	Detailed description of asset management system (where applicable)	<input type="checkbox"/>		
Additional requirements for gas licence applications				
4.4.6	Methods or standards proposed to apply in the supply of gas	<input type="checkbox"/>		
4.4.7	The nature and extent of the construction, alteration, operation or maintenance of a distribution system for the transportation of gas (gas distribution licence applications only)	<input type="checkbox"/>		
Additional requirements for water services licence applications				
4.4.8	Description of the methods or principles proposed to apply in the provision of water services	<input type="checkbox"/>		
<b>Customer contracts</b>				
Electricity				
4.4.9	Proposed standard form contract for electricity (where applicable)	<input type="checkbox"/>		
Gas				

Guideline reference	Information required	Information provided	Document title	Attachment / Page number of application
4.4.10	Proposed standard form contract for gas (where applicable)	<input type="checkbox"/>		
<b>Water</b>				
4.4.11	Proposed standard terms and conditions for the provision of water services (where applicable)	<input type="checkbox"/>		
4.4.12	Proposed standard customer contract for water services (where applicable)	<input type="checkbox"/>		
4.4.13	Proposed non-standard terms and conditions for the provision of water services (where applicable)	<input type="checkbox"/>		
<b>Customer information</b>				
4.4.14	Evidence of compliance with relevant supply industry methods, quality, standards and codes including compliance with relevant consumer protection arrangements (where applicable)	<input type="checkbox"/>		
4.4.14(a)	A description of how customer accounts will be managed.	<input type="checkbox"/>		
4.4.14(b)	Details of customer information provision policies (e.g. tariffs, fees and charges), customer consultation processes, account enquiries processes, payment arrangements and hardship policies and procedures, complaints and dispute resolution processes, account termination procedures and customer performance measures.	<input type="checkbox"/>		
4.4.14(c)	Information on the customer information management systems used by the applicant, including any billing systems.	<input type="checkbox"/>		
<b>Additional requirements for water services licence applicants</b>				
4.4.14(d)	Proposed financial hardship policy and supporting information (this requirement applies to licensees that supply potable (drinking) water or sewerage services to residential customers).	<input type="checkbox"/>		



Guideline reference	Information required	Information provided	Document title	Attachment / Page number of application
All applicants (where relevant)				
4.4.15	Commitment to become or remain a member of an approved ombudsman scheme and to be bound by its decisions (where applicable)	<input type="checkbox"/>		
Relevant experience				
4.4.16	A description of the applicant's prior experience and / or appropriate training related to the proposed activity, including key personnel used to install / operate / maintain the supply of electricity / gas / water.	<input type="checkbox"/>		
4.4.17	Information about contractors that will be used to provide services under the licence, including the applicant's policy on the use of sub-contractors, evidence of agreements to provide services and a description of the contractor's experience and technical capacity, including a list of key personnel and their qualifications.	<input type="checkbox"/>		
Other licences				
4.4.18	A description of any licences or approvals held by the applicant and its associated controlled entities in Australia to supply electricity, gas or water services.	<input type="checkbox"/>		
4.4.19	Information on any compliance action taken by a regulator in Australia in relation to the applicant, or its associated or controlled entities, in the last 10 years.	<input type="checkbox"/>		
Other regulatory approvals				
4.4.20	A description and evidence of the status of: <ul style="list-style-type: none"> <li>a. Applications for environmental, planning and health approvals, permits and licences.</li> <li>b. An agreement with the electricity or gas network operator for network access (this applies to applicants for electricity generation or retail services, and gas trading licences).</li> </ul>	<input type="checkbox"/>		

**Public interest information required (refer to section 4.5)**

Guideline reference	Information required	Information provided	Document title	Attachment / Page number of application
4.5.1	Statement and evidence about any information to support that the grant of licence would not be contrary to the public interest	<input type="checkbox"/>		

**Licence operating areas information required (refer to section 4.6)**

Guideline reference	Information required	Information provided	Document title	Attachment / Page number of application
4.6	Identify the proposed area within which the applicant intends to provide a licensed electricity, gas or water service (in the specified formats).	<input type="checkbox"/>		